

REMARKS

Reply to Restriction Requirement

In reply to the Restriction Requirement that was mailed in connection with the above-captioned case on January 4, 2006, Applicant elect the invention of Group I, claims 1, 36-42, and 53. The election is made with traverse.

The Office states “[t]he technical feature linking the inventions of groups I-III is a composition comprising a population of mammalian cells derived from joint tissue.” The Office further asserts, in view of DeBari et al. (Arthritis Rheum., 2001, 44(8), 1928-1942) and DeBari et al. (Oncology Research 12(6-7), 2001), that the technical feature of Groups I-III does not contribute over [the] prior art.” The Office also asserts that “Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features.”

Applicants respectfully traverse this basis for restriction and submit that Groups I, II, and III should be examined together.

Applicants direct the Office’s attention to the accompanying Declaration of Dr. Frank Luyten, which attests to the fact that the experiments described in the DeBari et al. (Arthritis Rheum., 2001, 44(8), 1928-1942), DeBari et al. (Oncology Research 12(6-7), 2001), and De Bari et al. (Clinical Rheumatology, 2001, 20(5):400) publications that relate to the invention were the joint contributions of the instant inventors alone, notwithstanding the additional authors on the publications. In particular,

Dr. Luyten attests that “[t]he other named authors, J. Neys and Przemyslaw Tylzanowski, were working under the direction of the named inventors, and did not contribute to the claimed invention.” Accordingly, these references are not available as prior art under section 102 (*In re Katz*, 215 U.S.P.Q. 14 (CCPA 1981)) and applicants therefore assert that the invention defines a technical feature that contributes over the prior art.

Accordingly, as there is a special technical feature that defines a contribution over the prior art, under the PCT Rules, the claims of Groups I, II, and III, satisfy the requirements of unity of invention and should be examined together in a single application.

Amendments

Applicants further note that a number of claims have been amended along the lines found in the international application. Applicants also add new claims 54 and 55. No new matter is added by these amendments.

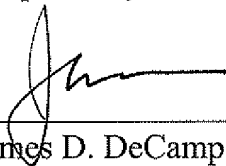
CONCLUSION

Applicants respectfully request reconsideration of the Restriction Requirement and rejoinder of Groups I, II, and III.

If there are any charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

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